

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO. R5-2006-0730
FOR
RIVER HIGHLANDS COMMUNITY SERVICES DISTRICT
AND
GOLD VILLAGE LAND DEVELOPMENT, LLC
YUBA COUNTY

This Order is issued to the River Highlands Community Services District (CSD) and Gold Village Land Development, LLC., (Gold Village) hereafter referred to individually or jointly as the Discharger, based on provisions of California Water Code section 13304, which authorizes the California Regional Water Quality Control Board, Central Valley Region (hereafter Regional Water Board) to issue a Cleanup and Abatement Order (Order), and Water Code section 13267, which authorizes the Water Board to require preparation and submittal of technical and monitoring reports.

The Executive Officer finds, with respect to the Discharger's acts or failure to act, the following:

CIRCUMSTANCES OF VIOLATIONS

1. On 7 June 2002, the Regional Water Board adopted Waste Discharge Requirements Order No. R5-2002-0101 (NPDES No. CA0081574) (NPDES permit), for the River Highlands CSD's Hammonton Gold Village Wastewater Treatment Plant. The plant is located on APN No 006220073000, and serves the Hammonton Gold Village community. The NPDES permit authorizes discharges of treated effluent to Sanford Creek or to land irrigation. Because the CSD could not immediately comply with effluent limitations for some constituents, the Regional Water Board also issued Cease and Desist Order No. R5-2002-0102, which includes a time schedule for compliance with those limitations.
2. River Highlands CSD operates the wastewater treatment and disposal facility, which serves approximately 84 homes. The treatment train consists of a lift station, primary settling tank, aeration reactor, secondary settling tank, filters, chlorine contact tank, an inoperative ultraviolet disinfection unit, effluent holding pond, and irrigation/land reclamation area. Although required by the permit and CDO, there is no treatment capability at this time to dechlorinate the effluent prior to discharge. The chlorinated effluent is typically discharged to the holding pond before being applied to the irrigation field, but effluent can be pumped directly to the irrigation field. Discharge to Sanford Creek requires opening a valve for a separate discharge line. According to the CSD, the facility only discharges to the land irrigation area and has never discharged to Sanford Creek. The irrigation area slopes toward the pond. The District reports that it has constructed an additional berm to ensure that runoff from the irrigation field returns to the pond and does not run off site. If the pond were to overflow, the overflow would discharge to Sanford Creek.
3. On 19 October 2006, the CSD notified the Regional Water Board that the aeration tank at the treatment plant had cracked, causing a failure of the entire treatment plant, and

that raw sewage entering the facility was bypassing the treatment units and being pumped into the effluent holding pond after being treated with chlorine tablets. Staff inspected the facility on 23 October 2006, and found that the effluent holding pond was full of tules and the pond freeboard was approximately five feet. Staff also found that the facility was poorly operated and maintained, and that numerous violations of the NPDES permit and CDO were on going, including violations of time schedules to upgrade the facility to meet permit requirements.

4. On 23 October 2006, the CSD adopted Resolution 2006-08, in which the District:
 - a. Declared a state of emergency exists within the wastewater service area;
 - b. Advised homeowners to minimize flows to the plant;
 - c. Requested the Regional Water Board to provide an emergency loan or grant in an amount not less than \$100,000 to fund emergency repairs; and
 - d. Authorized the District's Board chair and staff to take all further necessary measures to mitigate the emergency.
5. The Regional Water Board received a cost estimate for projects needing emergency funding using Cleanup and Abatement Account funds. The projects included aeration tank repairs, a chlorine system upgrade, spray field expansion, and a flow meter. Total costs were estimated to be \$82,270. Staff discussed the proposal in a teleconference on 27 October 2006, and requested additional information regarding how the projects that were proposed were needed to resolve the emergency. Staff also expressed concerns that no plan had been developed to bring the facility back into compliance. One concern is that the pond containing raw sewage cannot be properly dewatered to remove the sewage without discharging to surface water, but the facility does not have adequate treatment units to treat the wastewater to permit standards prior to discharge to surface water. The additional information requested by Regional Water Board staff has not been received.
6. Regional Water Board Order No. R5-2002-0101, requires, in part:
 - a. Discharge Prohibition A.1. *"Discharge of wastewater at a location or in a manner different from that described in the Findings is prohibited."*
 - b. Discharge Prohibition A.2. *"Discharge of wastewater from the pond or the irrigation/land disposal area is prohibited."*
 - c. Discharge Prohibition A.3. *"The by-pass or overflow of wastes to surface waters is prohibited..."*
 - d. Discharge Prohibition A.4. *"Neither the discharge nor its treatment shall create a nuisance as defined in Section 13050 of the California Water Code."*
 - e. Land Discharge Specification C.5. *"Treated wastewater shall be applied to the land application area at agronomic rates."*
 - f. Standard Provisions A.6. *"The Discharger shall at all times properly operate and maintain all facilities, and systems of treatment and control including sludge use and disposal facilities (and related appurtenances) that are installed or used to achieve compliance with this Order."*

- g. Provision G.19. *"In the event of any change in control or ownership of land or waste discharge facilities presently owned or controlled by the Discharger, the Discharger shall notify the succeeding owner or operator of the existence of this Order by letter, a copy of which shall be immediately forwarded to this office."*

To assume operation under this Order, the succeeding owner or operator must apply in writing to the Executive Officer requesting transfer of the Order. The request must contain the requesting entity's full legal name, the State of incorporation if a corporation, address and telephone number of the persons responsible for contact with the Regional Board and a statement. The statement shall comply with the signatory paragraph of Standard Provision D.6 and state that the new owner or operator assumes full responsibility for compliance with this Order. Failure to submit the request shall be considered a discharge without requirements, a violation of the California Water Code. Transfer shall be approved or disapproved in writing by the Executive Officer."

7. The Regional Water Board staff has determined that Gold Village purchased APN 006220073000 on 8 February 2006, and owns the land upon which the wastewater treatment facilities, effluent holding pond, and land irrigation facilities are located. The CSD is in violation of NPDES permit Provision G.19. by failing to notify the Regional Water Board of the change in ownership of the land upon which the treatment and disposal facilities are located.
8. Water Code Section 13050 defines the term "Pollution" to mean *"an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following:*
- a) *The waters for beneficial uses.*
 - b) *Facilities which serve these beneficial uses."*
9. Water Code Section 13050 defines the term "Nuisance" to mean *"anything which meets all of the following requirements:*
- 1) *Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.*
 - 2) *Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.*
 - 3) *Occurs during, or as a result of, the treatment or disposal of wastes."*
10. As currently operated, the CSD is allowing waste to bypass the treatment facility and chlorinated raw sewage to discharge to the effluent holding pond and land application area in violation of Order No. R5-2002-0101, Discharge Prohibitions A.1., A.2., and A.4., Land Discharge Specification C.5., and Standard Provision A.6, and in threatened violation of Discharge Prohibition A.3. In addition, the current discharge

creates, or threatens to create, a condition of pollution or nuisance as defined in Water Code Section 13050.

AUTHORITY – LEGAL REQUIREMENTS

11. Section 13304(a) of the California Water Code provides that:

“Any person who has discharged or discharges waste into waters of the state in violation of any waste discharge requirements or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including but not limited to, overseeing cleanup and abatement efforts. A cleanup and abatement order issued by the state board or a regional board may require the provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the regional board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.”

12. Section 13267(b)(1) of the California Water Code provides that:

“In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.”

13. Section 13304(c)(1) of the California Water Code provides that:

“If waste is cleaned up or the effects of the waste are abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any

government agency, the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of the waste within the meaning of subdivision (a), are liable to that government agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial actions. . .”

14. The Regional Water Board's *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, 4th Edition* (hereafter Basin Plan) designates beneficial uses of the waters of the State, establishes water quality objectives (WQOs) to protect these uses, and establishes implementation policies to implement WQOs. The beneficial uses of Sanford Creek include: municipal and domestic supply, agricultural irrigation, agricultural stock watering, hydropower generation, body contact water recreation, non-contact water recreation, warm freshwater aquatic habitat, cold freshwater aquatic habitat, warm fish migration habitat, cold fish migration habitat, warm spawning habitat, cold spawning habitat, and wildlife habitat.

DISCHARGER LIABILITY

15. As described in the above Findings, the CSD is subject to an order pursuant to Water Code section 13304 because the CSD has discharged waste where it has discharged, or threatens to discharge, into waters of the state in violation of waste discharge requirements and prohibitions issued by the Regional Water Board. In addition, the CSD has caused or permitted waste to be discharged or deposited where it has discharged, or threatens to discharge, to waters of the state and has created, and continues to threaten to create, a condition of pollution or nuisance.

Gold Village is subject to an order pursuant to Water Code section 13304 because it owns the property on which the discharge is occurring, had knowledge upon acquiring the property that it contained a sewage treatment facility, and has the legal ability to control the discharge. As described in the above Findings, Gold Village has permitted waste to be discharged or deposited where it has created, and continues to threaten to create, a condition of pollution or nuisance.

CSD and Gold Village are jointly and severally responsible for the discharges and threatened discharges of waste at the facility.

The condition of pollution is a priority violation and issuance or adoption of a cleanup and abatement order pursuant to Water Section 13304 is appropriate and consistent with policies of the Regional Water Board and the State Water Resources Control Board.

16. The Discharger is subject to an order pursuant to Water Code section 13267 to submit technical reports because existing data and information indicate that waste has been discharged and threatens to be discharged in violation Order No. R5-2002-0101 and the California Water Code, and that environmental harm has occurred as the result of

that discharge. The technical reports required by this Order are necessary to assure compliance with Section 13304 of the California Water Code, including protecting the beneficial uses of waters of the state, to protect against nuisance, and to protect human health and the environment.

17. If the Discharger fails to comply with this Order, the Executive Officer may request the Attorney General to petition the superior court for the issuance of an injunction.
18. If the Discharger violates this Order, the Discharger may be liable civilly in a monetary amount provided by the Water Code.
19. The issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000, et seq.), pursuant to Title 14 CCR Section 15321(a)(2). The implementation of this Order is also an action to assure the restoration of the environment and is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000, et seq.), in accordance with Title 14 CCR, Sections 15308 and 15330.
20. Any person affected by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with Title 23 CCR Sections 2050-2068. The petition must be received by the State Water Resources Control Board, Office of Chief Counsel, P.O. Box 100, Sacramento, CA 95812-0100, within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions are available at www.swrcb.ca.gov/water_laws/index.html and also will be provided upon request.

IT IS HEREBY ORDERED that, pursuant to California Water Code Section 13304 and Section 13267, the River Highlands Community Services District and Gold Village Land Development, LLC, shall:

1. Immediately cease the discharge of improperly treated wastewater to the land application area and prevent all discharges to surface waters. If the Discharger disposes of the wastewater by an alternative means (e.g. transporting it to another facility), the Discharger shall report the date, volume and location of the discharge, and shall provide documentation that the wastewater was properly disposed at a permitted facility.
2. Comply forthwith with Discharge Prohibition A.1., A.2., A.3., A.4., Land Discharge Specification C.5., and Standard Provision A.6 of Order No. R5-2002-0101, and cease causing, or threatening to cause, a condition of pollution or nuisance. If immediate compliance cannot be achieved, the Discharger shall submit plans and a time schedule **by 1 December 2006**, certified by a Registered Civil Engineer in the State of California, to come into compliance as soon as reasonably possible. The plans and schedule must also address how improperly treated wastes will be removed from the effluent holding pond, and compliance will be restored to the facility.

3. **By 1 December 2006**, the River Highlands CSD shall comply with Provision G.19. of Order No R5-2002-0101 regarding transfer of ownership. Additionally, **by 8 December 2006**, Gold Ridge Land Development LLC shall apply in writing to the Executive Officer requesting transfer of the Order, as outlined in Provision G.19.

If, in the opinion of the Executive Officer, the Discharger fails to comply with the provisions of this Order, the Executive Officer may refer this matter to the Attorney General for judicial enforcement or may issue a complaint for administrative civil liability.

This Order is effective upon the date of signature.

PAMELA CREEDON, Executive Officer

17 November 2006